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A-S

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/128,289 08/03/98 BURKE

W 2041

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IM22/1102

EXAMINER

JUSKA, C

ART UNIT

PAPER NUMBER

1771

DATE MAILED:

11/02/01

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/128,289

Applicant(s)
Burke et al.

Examiner
Cheryl Juska

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1771



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 13, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-17 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3, 4, and 10-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over EP 702 929 issued to Kerr (EP Kerr) in view of US 5,968,631 issued to Kerr (Kerr '631) and in further view of US 5,305,565 issued to Nagahama et al. for the reasons of record.
3. Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the two cited Kerr patents and the cited Nagahama patent, as applied to claim 1 above, and in further view of WO 96/38298 issued to Burke et al. for the reasons of record.
4. Claims 6, 7, 15, and 16 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Kerr and Nagahama patents, as applied to claims 1 and 11 above, and in further view of US Patent 4,820,566 issued to Heine et al. for the reasons of record.
5. Claims 5 and 14 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Kerr and Nagahama patents, as applied to claims 1 and 11 above, and in further view of the cited Heine patent and US Patent 5,906,877 issued to Popper et al. for the reasons of record.
6. Claims 8 and 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Kerr and Nagahama patents as applied to claims 1 and 11 above, and in further view of US Patent 4,722,954 issued to Hallworth for the reasons of record.

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Response to Arguments

7. Applicant's arguments filed in the Response to Office Communication on August 13, 2001, have been fully considered but they are not persuasive.

8. Applicant first argues "none of the cited references anticipate" the limitation that the carpet substrate have a shrinkage of 2.0-2.5% (Response, sentence spanning pages 1-2). In response, it is noted that the Examiner has not asserted such. None of the above rejections are anticipation rejections, but rather are obviousness rejections.

9. Applicant then asserts that the Examiner employs improper hindsight to modify Kerr with the addition of the Nagahama reference (Response, page 2, lines 1-5). In response, it must first be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Secondly, it is reasserted that the Nagahama reference was employed to support the Examiner's previous assertion that it is well-known in the art to prevent differential shrinkage between a floor mat substrate and the mat backing. Nagahama clearly teaches this problem of differential shrinkage is a well established issue in the art of floor mats (col. 1, lines 10-34 and col. 2, lines 27-30). Thus, Applicant's implication that recognition of this differential shrinkage problem is gleaned from the present specification through hindsight is erroneous.

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10. Next, Applicant asserts that "none of the cited references anticipate" the limitation of claims 1-8 and 10 that the rubber backing sheet have a shrinkage of 2.0-2.5% (Response, lines 7-12 of page 2). Again, none of the above rejections are anticipation rejections, but rather are obviousness rejections. Thus, this argument is irrelevant.

11. In lines 13-18 of page 2, with respect to claims 11-17, Applicant again merely makes an assertion that the prior art does not disclose or suggest the present invention, without providing any support for said assertion.

12. Therefore, Applicants arguments are found unpersuasive and the above rejections are hereby maintained.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.

A handwritten signature in black ink, appearing to be 'CJ' followed by a long horizontal stroke.

**CHERYL A. JUSKA
PRIMARY EXAMINER**

cj

November 1, 2001